HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.523 of 2006

Between:

Dr.Jenna Prem Kumar

... Appellant

And

The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Health, Medical & Family Welfare Department,
Hyderabad & others.

... Respondents

::JUDGMENT::

Counsel for the appellant: Shri M.V. Rajaram

Counsel for respondent No.1: Government Pleader for Medical Health & Family Welfare

Counsel for respondent No.2: Shri D.V. Nagarjuna Babu

Counsel for respondent No.3: Shri M.S. Ramachandra Rao

Counsel for respondent No.4: Shri A. Rajasekhar Reddy, Assistant Solicitor General

September 27, 2006

Per G.S. Singhvi, C.J.

This appeal is directed against order dated 6-4-2006 passed by the learned Single Judge in Writ Petition No.12481 of

2005, whereby he declined to entertain the appellant's prayer for issue of a mandamus to the official respondents to admit him in M.D. (Ayurveda) against the seat reserved for Scheduled Tribe candidates.

The Facts:

In furtherance of notification dated 18-4-2005 issued by N.T.R. University of Health Sciences (for short, 'the University') inviting applications for admission to M.D. (Ayurveda), M.D. (Unani), M.D. (Homoeo), M.Sc. (Nursing) and M.Sc. (Medical), the appellant applied for admission in M.D. (Ayurveda). The appellant cleared the entrance test, but he was not admitted in M.D. (Ayurveda) against the seat earmarked for candidates belonging to Scheduled Tribes because in furtherance of G.O.Ms.No.515, Health, Medical & Family Welfare (R.2) Department, dated 11-5-2005 issued by the State Government, the University admitted the candidates against the seats of earlier years.

The appellant challenged the alleged denial of admission in Writ Petition No.12481 of 2005. He prayed for grant of a declaration that Clause 3.6 of the prospectus issued by the University is violative of the Indian Medicine Central Council Act, 1970 (for short, 'the Act') and Articles 14 and 21 of the Constitution. He further prayed for quashing of G.O.Ms.No.515 dated 11-5-2005 and for issue of a mandamus to the respondents to allot one M.D. (Ayurveda) seat to him either for the year 2004-05 or 2005-06. In paragraphs 5, 6 and 7 of the affidavit filed by him, the appellant averred as under:

> "5. It is pertinent to submit that Government had issued G.O.Ms.No.515, dt.11-05-2005, in which the Government permitted the 2nd respondent university to make the admissions for 2004-05 for the academic year of 2003-04 as well as for the academic year 2005-06 from the ranks of the MD (Ayurveda) Entrance Test 2005-06 scheduled to be held

on 15-5-05.

6. I submit that the number of seats shown in the Prospects for Academic year 2005-06 namely (1) 10 (ten) seats for Kayachikitsa; (2) 10 (ten) seats for Salya, Salakya & Prasuti Tantra; (3) 6 (six) seats for Dravyaguna and 5 (five) seats for Rasashastra. Out of 5 seats in Rasashastra, 2 (two) seats for the candidates from outside the State. The rule of reservation as per clause 3 is 15% for SC, 6% for ST and 25% for BC total 46%. As per Clause 3.6, for both academic years i.e., 2004-05 (of 2003-04) and 2005-06, (4) four seats are required to be made available for Schedule Tribe Communities. But contra the 2nd respondent had not selected any candidate from ST Quota and as a result of it, I could not get seat under ST Quota, though I stood first in the State among ST communities even as per clause 3.4, the procedure shall be strictly followed but R-2 with a mala fide intention not followed. Hence, the act of the 2nd respondent shall be declared as null and void.

7. I further submit that the clause 3.6 is also in clear violation to the IMCC Act, 1970, and the allotment of seats to the earmarked quota is not as per the prospectus and it is unconstitutional. There is no procedure contemplated under the Actthat one who fails to pass in one attempt in a particular subject is not eligible to get seat in the same subject and in MD (Ayurveda) and this procedure is not followed for MD (Unani) and MD (Homeopathi) and such condition for MD (Ayurveda) is not only contrary to IMCC Act, 1970, but also unconstitutional. In view of such condition, I am eligible only for Dravyaguna subject and for non-allotment of seat to the Scheduled Tribe Community from time to time, it is not possible for any ST to get that seat and for the academic years i.e. 2004-05 and 2005-06 no ST was selected, hence this is evident that the 2nd respondent want to deny the seat to ST community for ever.
I submit that in one case one Miss. Padmaja (SC) Rank 208 for the Academic year of 2005-06, who hailed from Andhra University, is given seat as the 2nd respondent did not want to fill up any ST. It is pertinent to submit that in Dravyaguna, 3 open seats are available for the academic year 2004-05

and given one seat to SC only and not for S.T. There is no seat allotted to STs who hailed from Andhra University. For the Academic years 2004-05, 6 (six) seats allotted to Dravyaguna and 7 (seven) seats for 2005-06 in Dravyaguna subject at least 3 (three) seats are available for SC and ST candidates but no ST candidates were given seats in this Dravyaguna subject. It is further submitted that one Miss. Supadna from Andhra University hailed from SC got 46th Rank, given in Dravyaguna, who is in fact, ought to have been allotted in OC and the seat could have been given to ST but she was given a seat in SC quota deviating from order of merit, and, as a result of it, no seat to the ST candidate and further Ravi Kumar, Rank 135, who is belonging to ST of Andhra University, is given seat in Kayachiitsa subject in MD (Ayurveda) for the Academic Year 2005-06. It is further submitted that even in one unreserved seat can be given in any subject in MD (Ayurveda) for any subject in future for the inaction of the respondents and hence the action of the respondents shall be declared as null and void and unconstitutional in the interest of justice. The rule of reservation as stated in Clause 3.6 of the prospect is also contrary to law, and it exceeded its limitation, since respondent No.2 changes seats allotment to the subjects by decreasing or increasing its number as per his whims and fancies and hence the counseling itself is bad and contrary to the Constitution of India."

In the counter-affidavit filed by him on behalf of the State Government, Shri R. Sesharam Singh, Assistant Secretary to Government, Health, Medical and Family Welfare Department averred that the University conducted M.D. (Ayurveda) Entrance Test during the years 2000-01, 2001-02 and 2002-03, but no test was held for the academic year 2003-04 and, on that account, the students who are eligible in that year could not get admission in the Post Graduate courses; that a number of representations were received from the students and parents' association for making admissions against the seats meant for the academic year 2003-

04; that the University sought permission of the government to make admissions for 2003-04 in addition to the current year i.e. 2004-05 and, therefore, the State Government issued G.O.Rt.No.1104, H.M. & FW (R.2) Department dated 15-12-2004 for conducting entrance test in M.D. (Unani) for the academic year 2003-04. Thereafter, G.O.Ms.No.171 dated 19-2-2005 was issued permitting the University to conduct entrance test for M.D. (Ayurveda) for the academic year 2003-04. However, as the admission process for 2005-06 academic year had already started and admissions for the previous academic year i.e. 2004-05 were completed, the University proposed to treat the admissions for M.D. (Ayurveda) course conducted for 2004-05 as 2003-04 and to make the admissions for 2004-05 as well as 2005-06 from the candidates who passed M.D. (Ayurveda) entrance test 2005-06 held on 15-5-2005. The government accepted the proposal of the University and issued G.O.Ms.No.515, dated 11-5-2005.

In a separate affidavit filed by him, Shri P. Jayakar Babu, Registrar of the University by and large adopted the justification offered by the State Government for making admission against the seats of the previous year i.e. 2003-04. This is evident from the following extracts of his affidavit:

> "For admission into 2004-05 academic year, the candidates who had completed the internship on or before 31-10-2004 will be eligible and so also service candidates who completed a minimum of 3 years regular service as on 31-10-2004. The students belonging to this batch if not selected based on any on of their options for 2004-05, will also be considered for the 2005-06 batch.
>
> The candidates who have completed / will complete internship on or before 30-6-2005 and the service candidates who complete a minimum of 3 years regular service on or before 30-6-2005 will be eligible for admissions into the year 2005-06.
>
> Accordingly, students were advised to give their

options to the selection committee.

The above information was given to the candidates by way of a notice, which was displayed on the Notice Board before commencement of the selection process and announced through public address system. A copy of the said notice was sent to the Secretary to Government, HM & FW Departmetn, Govt. of A.P., and Commissioner, Department of AYUSH, Secunderabad for purpose of information. Consequently, the following seats were available in MD (Ayurveda) courses for the academic year 2004-05:-

1. Kaya Chikitsa - 10
2. Salya, Salakya and Prasuti Tantra - 10 at Dr.B.R.K.R. Govt. Ayurvedic College.
3. Dravya Guna - 6 Hyderabad
4. Rasa Sastra - 5 at Dr.N.R.S. Govt. Ayurvedic College, Vijayawada

Similarly, for the academic year 2005-06, the following seats are available.

1. Kaya Chikitsa (KC) - 10
2. Salya, Salakya and Prasuti Tantra (SSP) - 10 at Dr.B.R.K.R. Govt. Ayurvedic College.
3. Dravya Guna (DG) - 8 Hyderabad

4. Rasa Sastra (RS) - 5 at Dr.N.R.S. Govt. Ayurvedic C o l l e g e , Vijayawada

*1 seat each in the Specialities of KC, SSP and DG are reserved for foreign nationals as per Government of India Lr.No.R.12013/1/2003-E&C(ii), dated 23-3-2004.

In Rasa Sastra 2 seats are reserved for candidates from outside the State in each academic year.

All these seats are statewide courses. The admissions into these courses shall be as per the para 6 of the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 (Presidential Order).

The distribution of seats is as follows:

For 2004-05 academic year:

As per Presidential Order (University area wise)

1. Kayachikitsa (10 seats)- AU-4; OU-3; SVU-2; UR-1
2. SSP (10 seats)- AU-4; OU-3; SVU-2; UR-1
3. Dravyaguna (6 seats)- AU-2; OU-2; SVU-1; UR-1
4. Rasasastra (5 seats)- Local/on-local of AP-3, OS-2

As per category and other reservations

1. Kayachikitsa – OC-5, BC-2, SC-1, ST-1, BC/SC-1 (Service-OC-1, BC/SC/ST-1)
2. SSP - BC-5, BC-2, SC-1, ST-1, BC/SC-1 (Service-OC-1, BC/SC/ST-1)
3. Dravyaguna - BC-3, BC-2, SC-1 (Service-OC-1, BC/SC-1)
4. Rasasastra - Local/Non-Local of AP-3, OS-2

For 2005-06 academic year:

As per Presidential Order (University area wise)

1. Kayachikitsa (9 seats)- AU-3; OU-3; SVU-2; UR-1
2. SSP (9 seats)- AU-3; OU-3; SVU-2; UR-1
3. Dravyaguna (7 seats)- AU-3; OU-2; SVU-1; UR-1

4. Rasasastra (5 seats)- Local/on-local of AP-3, OS-2

<u>As per category and other reservations</u>

1. Kayachikitsa – OC-5, BC-2, SC-1, ST-1, (Service-OC-1)
2. SSP - BC-5, BC-2, SC-1, ST-1, (Service-OC-1)
3. Dravyaguna - BC-4, BC-2, SC-1 (Service-OC-1, BC-1)
4. Rasasastra - Local/Non-Local of AP-3, OS-2"

Shri P. Jayakar Babu also controverted the petitioner's claim for admission by stating that he had given option for Dravya Guna and Rasa Shastra, but no seat was reserved for Scheduled Tribe candidate in either of those specialties. According to Shri Jayakar Babu, the petitioner could not get a seat in open competition because candidates, who were much higher in merit list, were admitted against the seats earmarked for M.D. (Dravya Guna) and M.D. (Rasa Shastra). In an additional affidavit filed by him, Shri P. Jayakar Babu averred that the petitioner secured Rank No.166 and, as such, he could not be admitted against the specialties for which he had exercised option.

The learned Single Judge dismissed the writ petition filed by the appellant along with Writ Petition Nos.11782, 12662, 13065 and 14235 of 2005. While dealing with the appellant's case, the learned Single Judge noticed the arguments of Shri M.V. Rajaram and rejected the same by making the following observations:

> "The circumstances which led to the Government to take decision is evident from the correspondence between the Commissioner, the University and the Government as well as the representations of the students. Had the Government has not taken decision to treat the admissions of the candidates made for the academic year 2004-05 as admissions for 2003-04, all the seats meant for 2003-04 would go waste. In a way, the seats available for the candidates who appeared for the entrance test in pursuance

of the notification dated 18-4-2005 increased by twofold and thereby, expanding the scope of the rank holders of 2005-06 to get admission for the year 2004-05 and 2005-06. Therefore, I am unable to accept the contention of the learned counsel Mr. M.V. Raja Ram. In the circumstances of the case, the decision taken by the Government cannot be found fault and more so, in view of the fact that the decision enured to the benefit of more number of candidates because of increase of the seats."

Shri M.V. Raja Ram, learned counsel for the appellant reiterated the arguments made before the learned Single Judge and submitted that G.O.Ms.No.515, dated 11-5-2005 should be struck down because there is no provision in the Act for antedating the admissions. Learned counsel emphasized that the candidates who appeared in the entrance test conducted in 2005 could not have been admitted against the seats which were not filled during the academic year 2003-04. He then argued that if the admissions made against the seats of 2003-04 are declared illegal, the appellant will become entitled to be admitted in M.D. (Dravya Guna).

Learned counsel for the respondents fairly admitted that there is no provision in the Act for antedating admissions in the Post-Graduate Courses. They, however, submitted that the Court may not nullify the admissions made against the seats of the academic year 2003-04 because none of the candidates who have been benefited by the implementation of G.O.Ms.No.515 is a party before the Court. Learned counsel for the University relied on affidavit dated 8-9-2006 of Shri P. Jayakar Babu, which the deponent filed during the pendency of the appeal to show that all the admissions had been completed more than one year ago and no seat is available in the specialty of M.D. (Dravya Guna) against which the appellant can be admitted.

We have thoughtfully considered the respective submissions and carefully scrutinized the record. Before dealing with the rival arguments, we deem it proper to mention that in compliance of the direction given by the Court on 18-9-2006, Dr.D.S.Rao, Secretary, Medical, Health and Family Welfare Department, Government of Andhra Pradesh and Shri P. Jayakar Babu, Registrar of the University have appeared in person and candidly stated that there is no statutory provision under which the State Government could issue direction for antedating the admissions.

De hors the candid statement made by the officers representing the State Government and the University, we are convinced that in the absence of any provision in the Act framed by the Parliament or University statutes, the State Government could not have issued G.O.Ms.No.515 dated 11-5-2005 and directed the University to make admissions against the seats of 2003-04 on the basis of entrance test conducted in 2005. The methodology adopted by the State Government and the manner in which the University succumbed to the pressure of the Government show that both the State Government as well as the University acted in utter disregard of the statutory provisions. It is most unfortunate that the University acted as a subservient to the State Government instead of acting as an independent autonomous body.

We would have examined the entire matter in greater detail, but do not consider it necessary to do so because,

1) the admissions made on the basis of entrance test held in May 2005 cannot be annulled at this belated stage moreso because, none of the candidates who have been admitted is a party to the appeal,

2) even if the Court was to nullify the admissions made in

2005, no effective relief can be given to the appellant because the schedule of admission cannot be changed by the Court, and

3) it will not be possible for the appellant to complete the course and appear in the examination along with other candidates who were admitted in the year 2005.

In the result, the appeal is dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

September 27, 2006

svs